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EXAMINER	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/944,892
Filing Date: August 31, 2001
Appellant(s): REMBOSKI ET AL.

Anthony G. Sitko
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 14, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims s 1-9, 11-21 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,499,247	Matsuda et al.	3-1996
5,940,372	Bertin et al.	8-1999

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-9, 11-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matsuda et al. (US 5,499,247) in view of Bertin et al. (US 5,940,372).

Matsuda et al. discloses an automobile multiplex transmission system comprising the following features: regarding claim 1, as depicted in Fig. 1, comprising a first device (12) and a second device (17), an active network (18) communicatively coupling the first and second devices; regarding claim 11, a data interface to each of the first device (12) and the second device (17) for coupling the first device and the second device, respectively, to the active network (18), wherein the data interface operates to accept data from or deliver data to the device, respectively, independently of the functionality of the respective device; a plurality of coupled active network elements coupling the interfaces; regarding claim 18, a method of communicating data between a first device (12) and a second device (17) within the vehicle, the method comprising: communicatively coupling the devices utilizing a data transport medium (18).

Matsuda et al. does not disclose the following features: regarding claim 1, the active network having an overall communication capability and a portion of the overall communication being reserved for communication usage by the first device; regarding claim 2, the portion being exclusively reserved for the first device; regarding claim 3, wherein an unreserved portion of the overall communication capability is shared by each of the first and second devices; regarding

claim 4, wherein the portion comprises a plurality of communication paths between the first device and the second device; regarding claim 5, wherein the portion is reconfigurable; regarding claim 6, wherein the portion is reconfigurable responsive to a condition of the active network; regarding claim 7, wherein the condition is one of over-capacity and under-capacity; regarding claim 8, wherein the condition is a failure in the active network; regarding claim 9, wherein the active network comprises a packet data network; regarding claim 11, a portion of the active network elements, the portion being reserved for communication usage by the first device; regarding claim 12, wherein the portion is exclusively reserved for the first device; regarding claim 13, wherein the portion includes a plurality of communication paths between the first device and the second device; regarding claim 14, wherein the portion is reconfigurable; regarding claim 15, wherein the portion is reconfigurable responsive to a condition of the active network; regarding claim 16, wherein the condition is one of over-capacity and under-capacity; regarding claim 17, wherein the condition is a failure in the active network; regarding claim 18, the data transport medium defining a plurality of potential communication paths between the first device and the second device; reserving a portion of the plurality of potential communication paths for communications from or to the first device; transporting data from or to the first device using the data transport medium inclusive of the portion and transporting data from or to the second device using the data transport medium exclusive of the portion; regarding claim 19, wherein the step of reserving a portion of the data transport medium comprises reserving at least one communication path between the first device and the second device; regarding claim 20, comprising the step of reconfiguring the portion; regarding claim 21, comprising the step of reconfiguring the portion responsive to a condition of the active network.

Bertin et al. discloses a system for selecting a path comprising the following features: regarding claim 1, as depicted in Fig. 1, the active network (200) having an overall communication capability and a portion of the overall communication being reserved for communication usage by the first device (202); regarding claim 2, the portion being exclusively reserved for the first device (202); regarding claim 3, wherein an unreserved portion of the overall communication capability is shared by each of the first and second devices (202, 203); regarding claim 4, wherein the portion comprises a plurality of communication paths between the first device (202) and the second device (203); regarding claim 5, wherein the portion is reconfigurable (see abstract); regarding claim 6, wherein the portion is reconfigurable responsive to a condition of the active network (see abstract); regarding claim 7, wherein the condition is one of over-capacity and under-capacity (see column 2-3); regarding claim 8, wherein the condition is a failure in the active network (see column 4, lines 1-5); regarding claim 9, wherein the active network comprises a packet data network (200); regarding claim 11, a portion of the active network elements, the portion being reserved for communication usage by the first device (202); regarding claim 12, wherein the portion is exclusively reserved for the first device (202), see abstract; regarding claim 13, wherein the portion includes a plurality of communication paths between the first device (202) and the second device (203); regarding claim 14, wherein the portion is reconfigurable (see abstract); regarding claim 15, wherein the portion is reconfigurable responsive to a condition of the active network (see column 2-3); regarding claim 16, wherein the condition is one of over-capacity and under-capacity (see column 2-3); regarding claim 17, wherein the condition is a failure in the active network (see column 4, lines 1-5); regarding claim 18, as depicted in Fig. 1, the data transport medium (200) defining a plurality of potential

communication paths between the first device (202) and the second device (203); reserving a portion of the plurality of potential communication paths for communications from or to the first device; transporting data from or to the first device using the data transport medium inclusive of the portion and transporting data from or to the second device using the data transport medium exclusive of the portion, see abstract; regarding claim 19, wherein the step of reserving a portion of the data transport medium comprises reserving at least one communication path between the first device (202) and the second device (203); regarding claim 20, comprising the step of reconfiguring the portion, see column 9-11; regarding claim 21, comprising the step of reconfiguring the portion responsive to a condition of the active network, (see column 4, lines 1-5).

Therefore, it would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the system of Matsuda et al., by using the features, as taught by Bertin et al., in order to provide an efficient data communication system. See Bertin et al., Abstract, lines 14-19.

(11) Response to Argument

On pages 6-7, referring to the Declaration under 37 CFR 1.132 and References Appellant argues that an active network is known to include nodes performing custom operations on messages, and an active node is a defined physical structure. This argument is not persuasive for several reasons. First, the claims do not include means plus function language such that claim limitation must be interpreted to read on structures disclosed in the specification. Second, no definite structure or functions of an active network are found in the specification, and it is not seen how the active networks disclosed in the references cited are related to the active network

disclosed in the specification. Third, "custom operations" such as being aware of the contents of messages and participating in processing and modification of messages (Brief, page 13) are not even mentioned in the claims or the specification; thus, it is irrelevant whether the reference show these operations or not. The Affidavit under 37 CFR 1.132 filed 11/21/03 is insufficient to overcome the rejection of claims 1-9, 11-21 because the facts presented are not germane to the rejection at issue. Specifically, "custom operations" such as being aware of the contents of messages and participating in processing and modification of messages are not even mentioned in the claims or the specification. In addition, there is no correlation between the active network mentioned in the specification and the active networks described in the references.

On page 7, second paragraph, Appellant states that Examiner agrees Matsuda et al. do not teach an active network and that such teachings must be found elsewhere in that in response to the applicant's contention that neither Matsuda et al. or Bertin et al. teach an active network the examiner points only to Bertin et al. to support the contention that an active network is disclosed. Moreover, on page 8, Appellant argues that Matsuda et al. do not teach an active network. Examiner respectfully disagrees with these arguments. First of all, Examiner has never agreed that the primary reference of Matsuda et al. does not disclose an active network. It is noted that the specific physical structure for the "active network" is not claimed; and the specification does not set out any special definition with reasonable clarity, deliberateness, and precision. According to page 8 of the specification, an active network *may* include a plurality of active elements enabling communication paths. The active network *may* be based on packet data principles, such as TCP/IP, ATM, etc.; and the active network *may* incorporate a fabric of active network elements. Thus, it is clear that the terms "active network" are not defined in the

specification reasonable clarity, deliberateness, and precision. See *Teleflex Inc. V. Ficosa North America Corp., 229 F.3d 1313, 13256, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002), Rexnord Corp. v. Laitram Corp., 274 F3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001)* and MPEP 2111.01 Therefore, it is improper for the Examiner to give words of the claims special meaning when no such special meaning has been defined by the written description. As discussed above, the claimed active network reads on the bus network 18 depicted in Fig. 1 of Matsuda et al.

On page 9, Appellant argues that nowhere in Bertin et al. is the network described as being capable of **performing custom operations on the messages that pass through the nodes; being aware of the contents of the messages transported or being able to participate in the processing and modification of the message while it travels through the network**. (Emphasis added). Examiner respectfully disagrees with these arguments. It is noted that the above arguments are irrelevant with respect to the rejected claims, because the preceding argued features are not recited in the rejected claims. As discussed in the preceding rejections, it is found that the combined reference of Matsuda et al. and Bertin et al. disclose all the claimed limitations. Therefore, it is respectfully submitted that the combined reference of Matsuda et al. and Bertin et al. would have been obvious to arrive the claimed invention.

On pages 10-11, Appellant argues that the combination of Matsuda et al. and Bertin et al. does not render the claimed invention unpatentable; there is no suggestion in Matsuda et al. to use any other network structure than the taught therein; Bertin et al. is not directed to vehicle applications at all, and the special requirements of vehicle applications in relation to reliable and guaranteed message delivery or failsafe considerations are not addressed. Examiner respectfully disagrees with these arguments. Matsuda et al. discloses a network 18 of Fig. 1 in a vehicle.

Moreover, the features of reserving and communication capacity or bandwidth, reconfiguration network bandwidth in response to over-capacity, under-capacity, and failure are well known in the art of data communications. Bertin et al. teaches all these well-known features, as described in the rejections above. It would have been obvious to one the ordinary skill in the art to implement these well-known features for providing an efficient data communication. Indeed, Bertin et al. discloses that the purpose of an efficient bandwidth management is to reserve on the links as many bandwidth as possible with a guaranteed quality of service, and to use the inherent remaining bandwidth to transport traffic from the users who are just expecting a best effort service. See Bertin et al., Abstract, lines 14-19. Furthermore, the references of Matsuda et al. and Bertin et al. are in the same field of endeavor; the field of endeavor is the data communications in a network. Therefore, it is respectfully submitted that the combination of Matsuda et al. and Bertin et al. is proper and would have been obvious to arrive the claimed invention.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

KWANG BIN YAO
PRIMARY EXAMINER

Kwang B. Yao
March 14, 2005

Conferees
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